THE HONOURABLE SRI JUSTICE P.S. NARAYANA

W.P.No.13939 of 2006
Date: 06-11-2007

Between:
Bogi Balraj

Petitioner

And

Estate Officer, South Central Railway,
Rail Nilayam, Secunderabad and another

Respondents

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No.13939 of 2006

ORDER:

1. Heard Sri Chary representing S. Niranjan Reddy, the learned counsel representing the writ petitioner and Sri R.S. Murthy, the learned standing counsel for South Central Railway, representing respondents 1 and 2.

2. The counsel representing the parties had taken this court through the respective pleadings of the parties, the order made by the primary authority and also the order made by the appellate authority and certain submissions were made relating to the applicability of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter in short referred to as 'the Act' for the purpose of convenience). The relevant provisions of the Sections 4, 5 and 9 of the Act also had been referred to.

3. The writ petition is filed for a writ of Certiorari calling for the records of the order of the 1st respondent in proceedings No.CW/513/LC/Central dated 19.7.2005 as confirmed in Appeal-CMA No.130/2005 dated 28.3.2006 on the

file of the II Additional District Judge, Ranga Reddy District and quash the same as being without jurisdiction and for being in violation of the provisions of the Act, apart from being illegal, arbitrary, unconstitutional and consequently direct the respondents not to interfere with the rights of the petitioner or his principals in respect of land admeasuring Ac.1.08 gts in Survey No.29, situated at Ferozguda Village, Balanager Mandal, Ranga Reddy District and pass such other orders.

4. The subject property being an extent of Ac.1.08 gts of land in Survey No.29 of Ferozguda village, Balanagar Mandal, Ranga Reddy District, originally belonged to Nawab Shamshuddin Ali Khan. After his demise, the property devolved upon his sons viz., Nawab Syed Azizuddin Ali Khan and Nawab Mohiuddin Ali Khan. The said Nawab Syed Azizuddin Ali Khan and Nawab Mohiuddin Ali Khan who in turn were succeeded by Syed Khadeeruddin Ali Khan and other legal representatives. All the said legal representatives are represented by Syed Khadeeruddin Ali Khan.

5. It is also stated that the name of Syed khadeeruddin Ali Khan is also entered in the revenue records as the owner of the entire extent of Ac.1.13 gts in Survey No.29, Ferozguda village, Balanagar Mandal, Ranga Reddy District. The relevant copies of the Pahanis are placed before this court.

6. While so, for the purpose of laying a broad gauge line from Sanathnagar to Moulali, the South Central Railway initiated acquisition proceedings for an extent of Ac.5.35 gts of land in Survey Nos. 24, 45, 27, 29. 30.31 and 32 of Ferozguda village. In Survey No.29 an extent of Ac.0.05 gts was notified and acquired. The compensation in respect of the land in Survey No.29 was paid to the legal representatives of Nawab Shamshuddin Ali Khan. The said notice and Award of the Special Deputy Collector L.A.(General), Hyderabad are also placed before this court.

7. It is also stated that the balance extent of Ac.1.08 gts remained in the possession of the legal representatives and was kept vacant. For a brief while, a sand lorry association started using the place for parking their vehicles. As the said vehicle owners did not yield to the requests of Syed Khadeeruddin Ali Khan and other legal representatives for stopping the parking of the vehicles in the said land, the legal representatives of Nawab Shamshuddin Ali Khan appointed him as an agent for protecting the property and taking all necessary steps.

8. It is also stated that acting as the agent of Syed Khadeeruddin Ali Khan and other legal representatives of Nawab Shamshuddin Ali Khan, the petitioner took necessary steps for ensuring that the vehicle owners did not park their vehicles in that subject property. The subject property was being protected by the petitioner from encroachments from land grabbers. While so on 11.4.2005 and 12.4.2005 some officials including the Assistant Engineer and other officers of South Central Railway, Secunderabad came to the subject property with staff and Railway Protection Force and forcibly tried to dispossess the petitioner and the watchman. Upon questioning, the Officers furnished a copy of the acquisition proceedings dated 25.5.1985 and the survey plan made by Mandal Surveyor.

9. It is also stated that the petitioner after perusing the records informed the Officers that only an extent of Ac.0.05 gts in Survey No.29 in Ferozguda village was acquired for the broad gauge line and that the petitioner and his principals were in possession of the balance extent of Ac.1.08 gts. Despite the same on 13.4.2005 the 2nd respondent issued a notice to the petitioner asking the

petitioner to vacate the subject premises on or before 21.4.2005. The said notice was followed by another notice dated 19.4.2005 issued by the 2nd respondent under Section 4(1) of the Act

directing the petitioner to show cause as to why the petitioner should not be evicted from the premises in Survey No.29. The said notice reads as hereunder:

" "FORM "A"

Form of notice under sub-section (1) of Section (4) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

To:
Sri B.Balaraju,
H.No.7-1-307-1-A,
Subashnagar,
Hyderabad-18

Whereas I, the undersigned, am of opinion, on the grounds specified below that you are in unauthorized occupation of the public premises mentioned in the schedule below and that you should be evicted from the said premises.

1. **substituted G S R 41 dtd. 4.7.1981. The public premises (Eviction of Unauthorized Occupants) Rules 1971.**

GROUNDS

Now, therefore, in pursuance of sub-section (1) of Section of the Act, I hereby call upon you to show cause on or before the 26-04-05, why such an order of eviction should not be made.
And in pursuance of clause (b) (ii) of sub-section (2) of section IV, I also called upon you to appear before me in person or through a duly authorized representative capable to answer all material questions connected with the matter along with evidence that you intend to produce in support of clause shown, on 26-04-05 at 15.00 hrs for personal hearing. In case you failed to appear on the said date and time, the case will be decided exparte.

SCHEDULE

Unauthorized Occupation of Railway land by constructing compound wall in an area measuring (56+34)/2 x 90 = 4050 M2 within Railway premises between Balanagar and Bowenpally near Railway Bridge No. 10 at Kms 2/15 on South Central Railway to be removed.

SIGNATURE AND SEAL
OF THE ESTATE OFFICER.

NO.CW/513 '1/Land Cell Central
DATE:"

10. Immediately the petitioner and also the 2nd respondent made a request to the District Collector, Ranga Reddy District and the Additional Director of Survey & Land Records, Hyderabad for surveying the land in Sy.No.29 for fixing the boundaries of Ac.0.05 gts which was acquired by the South Central Railway and the remaining extent of Ac.1.08gts. After survey was conducted the land was demarcated and the petitioner continued in possession of the un-acquired on behalf of his principals. Despite the said demarcation on 27-7-2005 the 1st respondent served upon the petitioner a copy of an order dated 19-7-2005 under Section 5 of the Act requiring the petitioner to vacate the premises within 15 days and the said order reads as hereunder:

" BY REGISTERED POST WITH ACK. DUE

FORM "B"

Order under sub-section (1) of section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act 1971.

To,
Sri B.Balaraju,
H.No.7-1-307-1-A,
Subhashnagar,
Sanathnagar,
Hyderanad-18.

Whereas, I the undersigned, am satisfied, for the reasons recorded below, that you are in unauthorized occupants of the Public Premises specified in the schedule below:

REASONS

Now, therefore, in exercise of the powers conferred on me under sub-section (1) of Section (5) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said Sri B.BALARAJU, and all persons who may be in occupation of the said premises or any part thereof to vacate the said premises within 15 days of the publication of this order. In the event of refusal or failure to comply with this order within the period specified above the said Sri B.BALARAJU, and all other persons

concerned are liable to be evicted from the said premises, if need be, by the use of such force as may be necessary.

SCHEDULE

Unauthorized occupation of Railway land by constructing compound wall in an area measuring 4050 M2 within Railway premises, between Balanagar and Bowenpally near Railway Bridge No.10 at Kms. 2/15 on South Central Railway has to be removed.

Sd/-
19-07-2005
Signature & seal of the Estate Officer

NO.CW/4513/1/LC/Central
DATE"

11. Challenging the said order dated 19-7-2005 the petitioner preferred an Appeal under Section 9(2) of the Act before the designated authority-cum-Appellate Authority, District Court, Ranga Reddy District as CMA No.130 of 2005 and the learned II Additional District Judge, by order dated 28-03-2006 dismissed the said appeal observing as hereunder:

"The appellant miserably failed to produce any evidence to show that he is the authorized agent of the original owners of S.No.29 Ferozguda Village, if so under which document he was appointed as an authorized agent of the original owners and the remaining land in S.No.29 i.e. 1. 8 gts was vacant as on the date of the filing of the appeal and he was in possession of the said remaining extent of 1.8 gts in S.No.29 and it was not in possession of the Railway property and hence the respondents have no manner of right what so ever to invoke the provisions of Public premises unauthorized Eviction Act 1971 etc. When it is clearly mentioned in the notice issued by the respondent the unauthorized encroachment made by the appellant, it is for the appellant to establish he was not unauthorized occupant of the said property belonging to the Railway and he was in possession of the said property in his capacity as authorized agent of the original owners and the property which was in his occupation is situated in S.No.29 of Ferozguda. He failed to establish either of the same. When the appellant he himself filed to I.A.2158 of 05 for restitution of the possession, it is clear the Railway authorities evicted the appellant from unauthorized encroachment on 11.8.05 by invoking the powers vested under provisions of Public premises unauthorized Eviction Act, 1971. As the appellant failed to establish his right, title to the suit property, the question of restitution of the possession to the appellant which was lost due to action of the respondent on 11.8.05 does not arise. The appellant miserably failed to establish his contention that he was

in lawful possession of the property to which the respondent No.1 issued a notice on 19.7.05 for eviction, the respondent is having every right to get evict the unauthorized encroachment of the public property by invoking the powers vested in him under the said Act. Hence, I hold these two points in favour of the respondents and against the appellant.

In view of my finding in point No.2 and 3 the proceedings issued by R.1 under CW/513/1/LC/Central dated 19.7.05 are proper and correct and well within the powers vested for him. There is no need to declare them as illegal or null and void as pleaded by the appellant .In the result, the appeal filed by the appellant is hereby dismissed."

12. Aggrieved by the said order, the present writ petition is filed. The ground of non-production of special power of attorney which had been referred by the appellate authority in the orders specified supra is produced before this court.

13. In the counter affidavit filed by the respondents the allegations made in Para 4 of the affidavit had been specifically denied and the petitioner is put to strict proof of the said averments. With regard to Para 5 of the affidavit under reply, it is denied, Sri Syed Khadeeruddin Ali Khan's name is entered in revenue records as owner of the entire extent of Ac.1-13gts in Survey No.29, Ferozguda Village, Balanagar Mandal, Ranga Reddy District. A specific stand has been taken that the Pahani Patrikas filed by the petitioner would not reveal Syed Khadeeruddin Ali Khan as a owner of the said lands. It is an admitted fact that that though land acquisition proceedings for laying of the broad gauge line from Sanathanagar to Moula Ali, South Central Railway acquired the lands for an extent of Ac.5.35 gts in Survey Nos.24,27,29,30,31,32 and 47 of Ferozguda village, in Survey No.29 is an extent of Ac.0.05gts. Further the specific stand taken by the petitioner that the land to an extent of Ac.1.08 gts remained in possession of the Nawab Shamshuddin Ali Khan's legal representatives and

was kept vacant had been denied and further sand lorries Association parking their vehicles and they did not yield to the requests to stop parking of vehicles in the said land, the legal representatives of Shamshuddin Ali Khan appointed petitioner as their agent, all these averments also had been denied. Further with regard to the averments made in Paras 8 and 9 of the affidavit had been denied.

14. Further it is stated that it is true that the second respondent issued a notice to the petitioner dated 13.04.2005 asking the petitioner to vacate the subject premises on or before 21.4.2005 and it is denied again 2nd respondent issued another notice purportedly under Section 4 (1) of the Act directing the petitioner to show cause as to why the petitioner should not be evicted from the premises in Survey No.29. The notice is issued by the 1st respondent not by the 2nd respondent.

15. Further it is stated that the petitioner and 2nd respondent made a request to the District Collector, Ranga Reddy District and Additional Director of Survey and Land Records, Hyderabad, for surveying the land in Survey No.29 for fixing the boundaries of Ac.0.05gts of land which was acquired by South Central Railway and the remaining extent of Ac.1-08 gts after survey was conducted the land was demarcated and the petitioner were in possession of the unacquired land on behalf of his principals is false and denied. Whereas the petitioner was in unauthorized occupation of 4050 sq. metres from the acquired land of the 2nd respondent, for which 1st respondent served a copy of an order dated 19-07-2005 under Section 5 of the Act requiring the petitioner to vacate the premises within 15 days.

16. Further it is stated that they have acquired Ac.5.35 gts of land in Survey Nos.24,27,29,30,31,32 and 47, in that Survey No.29 is an extent of Ac.0.05gts

situated at Ferozguda village, Balanagar Mandal, Ranga Reddy District through the land acquisition proceedings through the award dated 25.05.,1985. The acquisition of the land was for the public purpose of laying broad gauge line from Sanathnagar to Moula Ali.

17. Ever-since the said lands admeasuring Ac.5.35 gts was acquired, the South Central Railway is in peaceful possession and enjoyment of the same. The said lands being vacant, the petitioner took advantage of the situation with *malafide* intention encroached an extent of 4050 square metres in Survey Nos.24,27,29,30,31 and 32.

18. It is further stated that the respondent being the competent authority carrying statutory functions under the provisions of the Act issued a notice in form "A" under subsection (1) of Section 4 of the Act, which was acknowledged by the petitioner on 21-04-2005. On 26-04-2005 certain Xerox copies of the documents prepared in list of documents and filed through his counsel . None of the documents filed by the petitioner goes to show and establish title and possession of the land mentioned in the form "A". The petitioner and respondent No.2 made a requisition to the District Collector, Ranga Reddy District and also to Additional Director Survey and Settlement, Hyderabad for survey of the land in Survey No.29 fixing the boundary in between the acquired land admeasuring Ac.0.05gts and remaining Ac.1.08gts of land which is in possession of the owner. The survey clearly shows the petitioner is in unauthorized occupation of an extent 4050 square metres in Survey Nos.24, 27,29, 30,31 and 32.

19. The contention of the petitioner that he was not given opportunity, is not correct. Further it is averred that when the petitioner failed to vacate the

premises the respondents issued a further notice in form "B" under sub section (1) of the Section 5 of the Act on 19-07-2005, which was acknowledged by the petitioner on 27.07.2005. By directing the petitioner and all persons claiming through him to vacate the said premises within 15 days. As the petitioner did not vacate the premises on 11.08.2005 under the provisions of the said statute the respondents evicted the petitioner.

20. The petitioner has no *locus standi* to represent the case. Further it is stated that when the notices were issued by the respondents for the un-authorized encroachment by the petitioner, it is for the petitioner to establish he was not unauthorized occupant of the said property belongs to the Railways and he was in possession of the said property in his capacity as the authorized agent of the original owner and the property which was in his occupation is situated in Survey No.29 of Ferozguda. Whereas document filed by him does not show title and possession of the land mentioned in Form "A". In the Pahani Patrika for the year 2002-03 under column No.13, it is clearly mentioned as Madhavinagar colony. It is not mentioned either the name of the original owners or their authorized agent were in possession at that relevant period. By this it shows the remaining land Ac.1-08 gts sold to third parties and houses came up therein by the name Bhavani Nagar Colony.

21. The decision of the Apex Court in **Surya Dev Rai Vs. Ramchander Rai** [1] had been relied upon. Wherein it was specified as hereunder:

> **" a)The writ of Certiorari will be issued for correcting errors of jurisdiction.**
> **b)Certiorari will also be issued when the court or tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principle**

of natural justice.

c)The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that court will not review findings of facts reached by the inferior court or tribunal, even if they be erroneous.

d)An error in the decision or determination itself may also be amenable to a writ of certiorari if it is a manifest error apparent on the fact of the proceedings eg.- when it is based on clear ignorance or disregard of the provision of law. In other words, it is a patent error, which can be corrected by certiorari but not a mere wrong decision."

Hence, the dismissal of the writ petition was prayed for.

22. The principal ground on which the appellate authority had dismissed the appeal -C.M.A.130 of 2005 is that the power of attorney had not been produced and the said defect is rectified by producing the same before this court.

23. Be that as it may, in the light of the Pahani Patrikas, the land acquisition proceedings and the award, when the power of attorney holder representing the original owners of the property is claiming ownership to the property, may be that it is highly doubtful whether the provisions of the Act can be made applicable or not. Section 4 of the Act dealing with issue of notice to show cause against order of eviction reads as hereunder:

"Issue of notice to show cause against order of eviction: (1) If the estate officer is of opinion that any persons are in unauthorized occupation of any public premises and that they should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made."

24. Section 5 of the Act dealing with eviction of unauthorized occupants reads as hereunder:

"**Eviction of unauthorized occupants:- (1) if , after considering the cause, if any, shown by any person in pursuance of a notice under Section 4 and (any evidence produced by him in support of the same and after personal hearing, if any, given under clause (b) of sub-section (2) of Section.4), the estate officer is satisfied that the public premises are in unauthorized occupation, the estate officer may make an order of eviction, for reasons to be recorded therein directing that the public**

premises shall be vacated, on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises."

25. No doubt, Section 9 of the Act deals with the Appeals. Section 2 of the Act deals with the definitions.

26. Section 2 (e) of the Act defines 'Public Premises' as hereunder:

"Section 2 (e) "Public Premises" means-
"(1) Any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorized Occupants) Amendments Act,1980, under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat."

27. The commencement of the Act itself specifies it is an Act to provide for the eviction of unauthorized occupants from public premises and for certain incidental matters.

28. Even according to the second respondent representing the South Central Railway when only an extent of Ac.0-05 gts in Survey No.29 had been acquired for the purpose of laying broad gauge line from Sanathnagar to Moulali, it would probabalize the stand taken by the writ petitioner. Apart from this aspect of the matter, the Special Power of Attorney is produced before this court. It no doubt true that care could have been taken to produce the same even before the primary authority or before the appellate authority as the case may be. But however, in the light of the specific observations made by the appellate authority, may be that the same is being produced before this court. In the light of the provisions of the Act in particular Sections 4 and 5 of the Act and also the

definition of 'public premises' referred to supra, when the very applicability of the Act is in controversy especially in the light of the material placed before the primary authority as well as the appellate authority, this court is satisfied that the impugned orders made both by the primary authority and the appellate authority cannot be sustained and accordingly, the same are hereby quashed and the matter is again remitted to the primary authority –Estate Officer-first respondent to reconsider the matter in the light of the provisions of the Act and also the material produced before this court as well. The writ petition is accordingly allowed to the extent indicated above. No order as to costs.

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P.S.NARAYANA,J

06-11-2007

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THE HONOURABLE SRI JUSTICE P.S.NARAYANA

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[1] AIR 2003 SC page 3044